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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re C.B., a Person Coming
Under the Juvenile Court Law.

B289574
(Los Angeles County
Super. Ct. No. DK22205B)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

S.B.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County. Kim L. Nguyen, Judge. Affirmed.

Robert McLaughlin, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

In this juvenile dependency case, defendant and appellant S.B. (father) challenges both the juvenile court's jurisdictional findings declaring his three-year-old son, C.B., a dependent of the court, as well as the court's dispositional order removing C.B. from father's custody and care. In particular, father argues the juvenile court erred in (1) finding father sexually abused C.B.'s six-year-old half sister, C.N., (2) asserting jurisdiction over C.B. based on the alleged abuse of C.N., and (3) finding circumstances existed justifying the removal of C.B. As discussed below, we disagree with father's arguments on appeal and affirm.

BACKGROUND

1. The Family

At the time these dependency proceedings began, father was living in a one-bedroom apartment with C.B., C.N., and the mother of both C.B. and C.N. (mother). Mother and father moved in together when C.N. was one year old. Mother reported that, although C.N. is not father's biological child, father "practically raised" her and that C.N. calls father "papa."

Luis N. (Luis) is C.N.'s father. Luis is married to Juanita N. (Juanita). Luis and Juanita have three young children.

2. Initial Petition

In March 2017, mother became upset with C.N. while she was doing her homework. Mother hit C.N. and pushed her head into a table. C.N. fell off of her chair and onto the floor, injuring her head. As a result of that incident, mother was arrested, and

the children were detained. C.B. was placed with father, and C.N. was placed with Luis.

Soon after, the Los Angeles County Department of Children and Family Services (Department) filed a Welfare and Institutions Code section 300¹ petition on behalf of both children (petition). The juvenile court eventually sustained the petition as amended and declared the children dependents of the court. The sustained petition alleged mother's excessive discipline of C.N. put both children at risk of serious physical harm. The petition did not mention father.² C.B. remained placed with father, and C.N. remained placed with Luis. The juvenile court ordered reunification services for mother, and a parenting class for Luis. Father submitted to the court's jurisdiction and agreed to make C.B. available for visits with mother.

3. Subsequent Referral and Petition

Eight months later, in November 2017, the Department received a new referral alleging father sexually abused C.N. In particular, Juanita told a Department social worker that C.N. had revealed to her that father touched C.N. inappropriately. The social worker spoke with C.N. about what she had told Juanita. C.N. told the social worker that when mother was not present, father "touched her inside her underwear" and "pointed to her front private area." C.N. stated she told mother about the abuse but, other than mother getting mad at father, nothing happened, and mother would leave C.N. alone with father.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² Originally the petition alleged Luis failed to protect C.N. from mother's excessive discipline. But the Department struck all reference to Luis from the petition before adjudication.

The following day, a Department social worker interviewed father. Father denied touching C.N. inappropriately. He said he used to help C.N. bathe and shower, but he never washed or touched her private areas. He reported that one time C.N. complained of pain in her vaginal area and he and mother checked C.N.'s genitals and discovered she had some white discharge. Father stated that happened only once. Father reported to a different Department social worker that he did not check C.N.'s vaginal area, rather only mother had done so and she had reported back to him about the problem.

A Department social worker also interviewed mother about the allegations against father. Mother stated she had never seen father touch C.N. inappropriately and C.N. had never told mother about any such abuse. Like father, mother stated she and father would help C.N. bathe but C.N. would wash herself. Mother also described the time when C.N. complained of pain in her vaginal area. Mother explained she examined C.N. and father was not in the room at the time, but she discussed the issue with him. Mother believed Luis was coaching C.N. to say such things.

a. Forensic Examination and Interviews

A few weeks after disclosing the alleged abuse, C.N. underwent a forensic physical examination. She was six years old at the time. The exam revealed a "flat white lesion [on her vulva] non tender with exam but this area was not touched due to location of lesion." The examiner reported this lesion was of "unknown cause" and "may be caused by sexual abuse or other mechanism," although the examiner did not think it resulted from sexual abuse. The examiner said C.N. should consult with a pediatric gynecologist for diagnosis.

That same day, C.N. and Juanita each participated in separate forensic interviews. The interviewer who conducted C.N.'s interview stated it was difficult to interview her because initially she was very shy. And at times, it was difficult to follow C.N.'s train of thought because she jumped from one topic to another. For example, when she and the interviewer were discussing things C.N. did not like to do, C.N. abruptly said, "I am going to rainbow," and began to list the colors of the rainbow. And when the interviewer asked C.N. to tell her about an earlier conversation she had with a social worker, C.N. stated, "I go to get a bear. [¶] No, I get a bear. Two bears." Nonetheless, when told Juanita was worried about something that had happened to C.N., C.N. responded that mother had hit C.N. with her hand and had pulled C.N.'s hair because C.N. "didn't know take away," a reference to her math homework and, specifically, subtraction.

Although C.N. opened up a bit as the interview progressed, she did not say much about the alleged abuse. The most C.N. revealed to the interviewer was that she was on the bed when father touched her and she described the touching as "rubbing in circular motions." C.N. did not say when the abuse happened or whether mother was present when it happened. Specifically, C.N. stated father "was touching me here" and pointed to her vaginal area. She said, "[H]e put his hand inside," and, "In my body." C.N. explained that, after father "touched me on my body," she moved away and father "followed me" "in the bed." She also said it "hurt" when father touched her. When asked if father said anything when he touched her, C.N. replied, "Nothing. I was sleeping." And when asked if it had happened more than once, C.N. responded, "Well, Monday and Friday." And again later she indicated father touched her on "Monday and

Friday” “[b]ut not anymore.” She also stated that after father touched her under her clothes, he hit her on her “butt” and “was playing with me.” C.N. said she told mother what father did.

During Juanita’s interview, Juanita explained what C.N. had told her. According to Juanita, C.N. said “she was on the bed, and I guess her mom was washing the dishes because I asked her. And she said . . . [she] was on the bed, and [father] got on the bed. And . . . he got close to [C.N.] so then [she] moved a little further away, and he followed [her]. And then she told me he was laying next to [her] and he started touching [her], and then I asked her when you say touching, is it like up here or back or — and she’s like here in the front. And I was like, was he touching you on top of your pants or under? And she said under, and he started doing this [a movement with her finger].” “[S]o I said where was your mom? And she—she was washing the dishes, so I said, okay. What was he doing? Did he do anything else to you? Did he put anything in you or anything? And she said no, so I said what else was he doing, and she said [she] didn’t want to look. But she didn’t want to see what he was doing.” C.N. also told Juanita that she had told mother what father did.

Juanita described how and why C.N. told her about father touching her. Juanita explained that while living with them, C.N. threw temper tantrums that were more extreme than the average child her age. Because of this behavior, Juanita enrolled in a parenting course, during which she described C.N.’s tantrums. Someone in the parenting course asked Juanita if she had ever asked C.N. if she had been abused. Juanita had not raised the issue with C.N., but she decided she would. Juanita told the interviewer that one day when C.N. was helping Juanita clean, Juanita stated, “[C.N.], I have a question for you, and I

want you to be honest with me. Has [father] ever touched you in your body? And her face just went like blank, and she stood quiet. And I'm just like—it's—I'm just asking a question. I just want to know. It's okay. And she said, yes, and I—when she said yes, I was like, okay. When you say touching, maybe—maybe he's like on your backside. She's like, well, he did spank me once on my back. Did he spank you on the front or something like that or not in the back? No, he touched me in the front. So when you say touch, did he spank you too on the front? Like maybe he's just hitting. And she's like, no, it wasn't hitting. He touched me. And then I was like so that's when she told me the story.”

Juanita also described an incident between her four-year-old son (C.N.'s half brother) and C.N. that took place before C.N. disclosed the incident with father. Juanita said the two children were playing in their room at home when it became quiet, so Juanita checked on them. She found them on the bed completely covered by blankets. Juanita pulled the blankets back and saw C.N. on top of her half brother. It appeared C.N. had been kissing her half brother, who said, “[C.N.] told me to do it.” Juanita also stated that, before C.N. was living with them and when she would visit, she did not want Juanita to wash her private area during shower time. C.N. would tell Juanita that her private area hurt and not to touch it.

b. Section 342 Petition

On December 28, 2017, and as a result of C.N.'s statements, the Department filed a subsequent petition under section 342 on behalf of C.B. (342 petition). The 342 petition alleged both that father sexually abused C.N. and mother failed to protect C.N. from the abuse. The 342 petition alleged three identical counts, one each under section 300, subdivisions (b), (d)

and (j), stating father's and mother's conduct with respect to C.N. endangered C.B. and put him at risk of serious physical and emotional harm.³ C.B. was detained and placed with a foster family.

Prior to adjudication of the 342 petition, a Department social worker conducted interviews. In February 2018, the social worker interviewed C.N., who again described how father touched her. Although it seemed clearer that the touching happened one time only, "on Monday," C.N.'s description was consistent with her earlier descriptions. C.N. told the social worker she had never seen father touch C.B., but that father and C.B. showered together. C.N. stated that, because of father, she was scared "to go with" mother.

Father denied the allegations of the 342 petition. He told the social worker sometimes he showered C.N. and sometimes he watched television on the bed with her. He explained he was never alone in the one-bedroom home with C.N. He also reported his romantic relationship with mother had ended as a result of " 'this situation.' "

The social worker also interviewed mother, who stated she had been unaware of father's alleged conduct and had not

³ Specifically, each count alleged: "The child, [C.B.]'s father, [father], sexually abused the child's sibling, [C.N.] . . . On a prior occasion, the father fondled the child's sibling's vagina. The mother, [mother], knew of the sexual abuse to the child's sibling by the father and failed to protect the child's sibling. Such sexual abuse of the child's sibling by the father and the mother's failure to protect the child's sibling endangers the child's physical and emotional health and safety and places the child at risk of serious physical and emotional harm, damage, danger, sexual abuse and failure to protect."

suspected anything. Mother said she “ ‘didn’t believe [C.N.] in what she said and I should have believed her with what she said about what happened with [father] that he touched her.’ ”

Mother stated that if her children were returned to her, she would allow father to visit C.B., but father would not be allowed in her home. The social worker also visited C.B. at his foster home, where he appeared comfortable and affectionate with his caregivers. However, C.B. was unable to give any statements because his speech was noticeably delayed and difficult to understand.

In addition, the social worker interviewed Luis and Juanita, both of whom reiterated prior reports. Luis also noted that C.N. seemed more relaxed and more willing to visit mother when father was not present. Juanita reported that C.N. had confided in her that mother told C.N. not to tell anyone when, against court order, father participated in a recent visit. Mother told C.N. that if she told anyone father was present mother would be handcuffed. Juanita also stated C.N.’s tantrums became extreme after seeing father.

c. Father’s Section 355 Objections

In March 2018, father filed objections under section 355 to all hearsay statements made by C.N., Luis, and Juanita that were included in Department reports and any other documentation that the Department sought to introduce as evidence. C.N., Luis, and Juanita were present at the hearing on the objections, but none was called to testify. At the hearing, counsel for father withdrew his objections to the statements made by C.N.

d. Adjudication and Disposition

The adjudication and disposition hearing was held on April 11, 2018. The following were admitted into evidence without objection: the Department's detention and jurisdiction reports and their attachments, a last minute information for the court, and the transcripts and video recordings of both C.N.'s and Juanita's forensic interviews.⁴ No one testified at the hearing.

Counsel for father argued the court should dismiss the 342 petition in its entirety. Although father denied the sexual abuse allegations, counsel claimed that even assuming they were true, the petition should be dismissed because C.B. was "very differently situated than [C.N.]" As to the section 300, subdivisions (b) and (d) counts, counsel noted there was no evidence that father physically harmed or sexually abused C.B. or that C.B. was at substantial risk of either physical harm or sexual abuse. Counsel explained that "father had sole custody of his son from March 27th, 2017, to December 29th, 2017, when the . . . [342] petition was filed and [C.B.] was detained. Family preservation services were in place and there were no concerns noted for [C.B.]'s safety. On previous status review reports, father was noted to be the primary caregiver of [C.B.] and that he took care of the child and maintained his medical and dental needs. He's been proactive with following through for services for the child. No concerns were noted." Finally, counsel for father also argued the court should dismiss the subdivision (j) count. In arguing the point, counsel noted father's "lack of familial connection" to C.N. and distinguished father's alleged conduct

⁴ The video recordings of the forensic interviews are not in the record on appeal.

from the egregious conduct at issue in *In re I.J.* (2013) 56 Cal.4th 766.

Counsel for the Department argued the court should sustain the 342 petition. Counsel stated C.N. was clear and descriptive in her statements regarding father's conduct. Counsel noted courts have held "the sexual behavior of a parent can place the victim's sibling[s] who remain in the home at risk. Even when the siblings may have been unaware of the abuse." Counsel stated, "[T]he abuse here took place in the family home, in very small quarters, which I believe is one bedroom, with a kitchen and a bathroom. A home is supposed to be a place of security. Here that security has been violated while [father] had touched [C.N.]"

Following argument, the juvenile court sustained the 342 petition in its entirety and found C.B. a dependent of the court under section 300, subdivisions (b), (d), and (j). The court stated it had considered all the evidence, including statements made to Department social workers as well as the videos and transcripts of C.N.'s and Juanita's forensic interviews. The court found C.N. was consistent in her description of abuse, stating, "I think [C.N.] is absolutely clear in her statements about the sexual abuse by [father]. She said it to the social worker. She, again, was consistent in the forensic interview and even noted details that she tried to move away and that he followed her. She even indicated the nature of the touching and indicated it was skin-to-skin underneath her pants. So the court does find very credible [C.N.]'s statements regarding the abuse. [¶] Furthermore, the court will note that [C.N.] was, again, consistent not only with the social worker and in the forensic interview, but also to [Juanita] when she initially disclosed the

abuse, that she did tell the mother and that, in fact, the mother did nothing about it.”

As to the relationship to C.B. of father’s abuse of C.N., the juvenile court rejected the notion that C.B. was differently situated from C.N. The court found that “the abuse occurred in the family home, that [father] quite clearly had a fatherly relationship with [C.N.], that he has a fatherly relationship with [C.B.] And even though [C.N.] may not be his biological daughter, by all accounts he treated her as a daughter and cared for her as a father. [¶] And furthermore, the court will note that [C.N.] and [C.B.] are very similar ages. [C.N.] has not yet hit puberty. This abuse happened at a very young age, and [C.B.] is approaching that age.”

C.B. was removed from both parents. The juvenile court ordered family reunifications services, including monitored visits.

4. Appeal

Father appealed the juvenile court’s April 11, 2018 findings and orders.

DISCUSSION

1. Justiciability

As father correctly points out, regardless of our resolution of this appeal, the juvenile court would maintain jurisdiction over C.B. based on mother’s conduct. In sustaining the 342 petition, the juvenile court exercised jurisdiction over C.B. based both on father’s conduct (sexual abuse of C.N.) as well as on mother’s conduct (failure to protect C.N. from the sexual abuse). Mother has not appealed the court’s jurisdictional findings. Thus, regardless of father’s appeal, dependency jurisdiction over C.B. remains. In such circumstances, we need not review the findings as to father. (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762.)

Nonetheless, we exercise our discretion to consider father’s appeal. (*Id.* at pp. 762–763.) The Department does not address this issue in its respondent’s brief.

2. Jurisdiction

a. Standard of Review

We review the juvenile court’s jurisdictional findings for substantial evidence. (*In re I.C.* (2018) 4 Cal.5th 869, 892 (*I.C.*)) “It is well settled that the standard is not satisfied simply by pointing to ‘ “isolated evidence torn from the context of the whole record.” ’ [Citations.] Rather, the evidence supporting the jurisdictional finding must be considered ‘ “in the light of the *whole record*” ’ ‘to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value.’ ” (*Ibid.*) Similarly, we review “whether the record as a whole provides substantial evidence to support a determination that [a] child’s statements bear special indicia of reliability.” (*Ibid.*)

b. Admissibility and Reliability of a Minor’s Out-of-court Statements

“In a juvenile dependency proceeding, a child’s out-of-court reports of parental abuse are admissible in evidence regardless of whether the child is competent to testify in court.” (*I.C., supra*, 4 Cal.5th at p. 875.) However, when out-of-court statements are made by a child who is too young to separate truth from falsehood (sometimes referred to as a truth-incompetent child), our Supreme Court has held that, unless they bear “special indicia of reliability,” a juvenile court may not base its findings solely on such statements. (*Ibid.*; *In re Lucero L.* (2000) 22 Cal.4th 1227 (*Lucero L.*)) This requirement is rooted in the constitutional guarantee of due process and “reflects a balance between the vital

interests at the heart of the juvenile dependency system: It is designed to ensure that children are protected from abuse while guarding against the risk that children will needlessly be separated from their parents on the basis of unreliable reports that are not subject to testing in court.” (*I.C., supra*, 4 Cal.5th at p. 875.) “[U]ltimately the question is simply whether the ‘time, content and circumstances of the statement provide sufficient indicia of reliability’ to support the juvenile court’s jurisdictional finding, considering the important interests at stake.” (*Id.* at p. 890.)

Our Supreme Court has identified “factors courts may consider in determining whether a child’s hearsay statements satisfy this standard of reliability, including: ‘(1) spontaneity and consistent repetition; (2) the mental state of the declarant; (3) use of terminology unexpected of a child of a similar age; . . . (4) lack of motive to fabricate,’ ” and (5) although not determinative, “ ‘the child’s ability to understand the duty to tell the truth and to distinguish between truth and falsity.’ ” (*I.C., supra*, 4 Cal.5th at p. 891.) The listed factors are not exclusive. Rather, “ ‘any factor bearing on reliability may be considered.’ ” (*Ibid.*) “ ‘[T]he unifying principle is that these factors relate to whether the child declarant was particularly likely to be telling the truth when the statement was made.’ ” (*Ibid.*)

“A juvenile court presented with a child’s out-of-court reports of parental abuse faces a sensitive and difficult task. ‘Although the parent has an interest in avoiding an erroneous finding of jurisdiction, the child—and, accordingly, the court—has at least as important an interest in avoiding erroneous findings of *no* jurisdiction.’ [Citation.] Courts evaluating abuse allegations must keep in mind that a child’s verbal and cognitive

limitations may prevent her from providing an account of her abuse that is as coherent and consistent as we might expect from an adult. [Citation.] A child's account may reflect uncertainty, and may even contain some contradictions, and nevertheless warrant the court's trust." (*I.C.*, *supra*, 4 Cal.5th at p. 896.)

c. Reliability of C.N.'s Out-of-court Statements

Although father concedes C.N.'s statements were admissible, father argues both that C.N. was truth-incompetent and that her out-of-court statements did not bear any special indicia of reliability. As a result, father claims the juvenile court erred in relying on C.N.'s statements. We disagree.

Initially, as the Department correctly points out, no one raised the issue below of C.N.'s ability or inability to differentiate truth from falsehood. Thus, the Department claims father has forfeited the issue. Although father filed section 355 objections to C.N.'s hearsay statements, the objections were not specifically based on C.N.'s inability to decipher truth from falsehood and, in any event, father withdrew his objections at the hearing on the matter. In addition, although C.N. was available to testify in court, no one called her to testify.

Father argues he has not forfeited the issue. He suggests that, because our Supreme Court issued its opinion in *I.C.*, *supra*, 4 Cal.5th 869, 15 days after the jurisdiction hearing in this case, he could not have raised a timely objection based on that opinion. But this argument is disingenuous because *I.C.* did not change the law. Rather, *I.C.* applied existing law—which our Supreme Court clearly enunciated in 2000 in *Lucero L.*—to an “unusual” set of facts. (*I.C.*, *supra*, 4 Cal.5th at p. 896.) Father also claims that, because C.N. never testified in court, he could not have objected to or raised the issue of her truth competency below.

However, this too misses the mark. In essence, father asks us to undertake the same factual analysis and determination he claims he could not have asked the juvenile court to make. In other words, despite the fact that C.N. did not testify in court, the juvenile court was in the same, if not a better, position than this court to determine C.N.'s truth competency. In addition to the same record before this court, the juvenile court also had before it the video recordings of C.N.'s and Juanita's forensic interviews. Father fails to articulate a satisfactory reason why he should be excused from raising the issue of C.N.'s truth competency before the juvenile court, but allowed to raise the issue for the first time on appeal. The juvenile court should have been afforded the opportunity to make the determination first. (*In re M.H.* (2016) 1 Cal.App.5th 699, 713–714.) We conclude father could have and should have raised the issue of C.N.'s truth competency below.

Nonetheless, even considering the reliability of C.N.'s out-of-court statements, we conclude they bore special indicia of reliability. Although during her forensic interview C.N. jumped from topic to topic and made some nonsensical comments, such behavior is not uncommon for a six-year-old child discussing difficult topics with a stranger in a strange setting. We do not agree with father's position that C.N.'s behavior and non sequitur statements during the interview render her description of father's sexual abuse unreliable. Indeed, in addition to her forensic interview, C.N. told the same story on three other occasions—once to Juanita and twice to Department social workers. As our Supreme Court has noted, "Courts evaluating abuse allegations must keep in mind that a child's verbal and cognitive limitations may prevent her from providing an account of her abuse that is as coherent and consistent as we might expect from an adult.

[Citation.] A child's account may reflect uncertainty, and may even contain some contradictions, and nevertheless warrant the court's trust." (*I.C.*, *supra*, 4 Cal.5th at p. 896.)

We also do not agree with father's argument that, by asking C.N. about abuse, Juanita improperly suggested the idea of sexual abuse to C.N. and coaxed her into fabricating allegations against father. Although Juanita certainly opened the door for C.N. to talk to Juanita about sexual abuse, the record does not indicate that Juanita "suggested" to C.N. to make up a precise and detailed story that father sexually abused her. And we discern no motivation for C.N. to make false accusations against father.

Additionally, although C.N.'s statements certainly constituted the basis for the juvenile court's jurisdictional findings, other evidence in the record supports the reliability of C.N.'s allegations of sexual abuse. For example, Juanita noted that C.N. previously had told Juanita not to wash her private area because it hurt. Juanita also recounted the time she found her young son and C.N. under the sheets, with C.N. apparently kissing the boy. Finally, Juanita and Luis reported C.N. was more relaxed about visiting mother when father was not present and when C.N. did see father, her tantrums became more extreme. Thus, in light of the facts of this case, we conclude the juvenile court did not err in relying on C.N.'s out-of-court statements to support its jurisdictional findings.

Although father argues this case is factually similar to *I.C.*, *supra*, 4 Cal.5th 869, we conclude otherwise. In *I.C.*, our Supreme Court reversed the juvenile court's jurisdictional findings, which were based entirely on statements made by a three-year-old girl who alleged her father had sexually abused

her. (*Id.* at p. 875.) The juvenile court had described the child's statements about the alleged abuse as " 'at times, . . . very clear' " and " 'at other times . . . very unclear, and at times very confusing.' " (*Id.* at p. 881.) In contrast here, although at times during her forensic interview C.N.'s train of thought was difficult to follow or understand, her statements about father's abuse were not difficult to understand. Indeed, C.N.'s statements about father's conduct were consistent across the board. She not only described father's conduct during her forensic interview, but she described it on three other occasions, each time telling the same story. Also, in *I.C.*, the child's description of sexual assault by her father was extremely similar to an earlier and factually unique sexual assault she had endured by an older neighborhood child, whom she had seen just days before making statements about her father. (*Id.* at p. 878.) No such circumstances exist here. There is no evidence C.N. previously had been sexually abused, let alone abused in a way similar to the way she described father's sexual abuse. Finally, in *I.C.*, the child stated that, at some point, her adult stepsister was present, and the father wanted to sexually abuse both of them. (*Id.* at p. 880.) However, the child's stepsister denied that any such thing occurred. (*Id.* at p. 882.) Again, in contrast here, other than father, no one disputes C.N.'s claims.

d. Substantial Evidence Supports Jurisdiction

Having affirmed the reliability of C.N.'s statements of father's sexual abuse, we turn to the substantiality of the evidence to support the juvenile court's finding of jurisdiction over C.B. Father argues substantial evidence does not support the court's exercise of jurisdiction over C.B. We disagree.

The juvenile court exercised its jurisdiction under section 300, subdivisions (b)(1), (d), and (j). Under subdivision (b)(1), a juvenile court may assert dependency jurisdiction and declare a child a dependent of the court when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child.” Under subdivision (d), a juvenile court may assert jurisdiction over a child when “[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household.” And under subdivision (j), the juvenile court may assert jurisdiction over a child when “[t]he child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.”

“The legislatively declared purpose of these provisions ‘is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm.*’ (§ 300.2, italics added.) ‘The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’ ” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.) “ ‘The purpose of dependency proceedings is to prevent risk, not ignore it.’ ” (*Jonathan L. v. Superior Court* (2008) 165 Cal.App.4th 1074, 1104.)

When, as is the case here, “ ‘a dependency petition alleges multiple grounds for its assertion that a minor comes within the

dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.' ” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

Because subdivision (j) is most relevant here, we focus on that subdivision. (See *In re I.J.*, *supra*, 56 Cal.4th at pp. 773–774.) “ [S]ubdivision (j) was intended to expand the grounds for the exercise of jurisdiction as to children whose sibling has been abused or neglected as defined in section 300, subdivision (a), (b), (d), (e), or (i). Subdivision (j) *does not* state that its application is limited to the risk that the child will be abused or neglected *as defined in the same subdivision* that describes the abuse or neglect of the sibling. Rather, subdivision (j) directs the trial court to consider whether there is a substantial risk that the child will be harmed under subdivision (a), (b), (d), (e) *or* (i) of section 300, notwithstanding which of those subdivisions describes the child's sibling.’ ” (*In re I.J.*, at p. 774.)

“Unlike the other subdivisions, subdivision (j) includes a list of factors for the court to consider: ‘The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.’ (§ 300, subd. (j).) ‘The “nature of the abuse or neglect of the sibling” is only one of many factors that the court is to consider in assessing whether the child is at risk of abuse or neglect in the

family home. Subdivision (j) thus allows the court to take into consideration factors that might not be determinative if the court were adjudicating a petition filed directly under one of those subdivisions. [¶] The broad language of subdivision (j) clearly indicates that the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.’” (*In re I.J.*, *supra*, 56 Cal.4th at p. 774.)

Our Supreme Court has recognized that “the more severe the type of sibling abuse, the lower the required probability of the child’s experiencing such abuse to conclude the child is at a substantial risk of abuse or neglect under section 300. If the sibling abuse is relatively minor, the court might reasonably find insubstantial a risk the child will be similarly abused; but as the abuse becomes more serious, it becomes more necessary to protect the child from even a relatively low probability of that abuse.” (*In re I.J.*, *supra*, 56 Cal.4th at p. 778.)

Father contends that, despite his sexual abuse of C.N., substantial evidence does not support a finding that C.B. was at substantial risk of suffering physical, emotional, or sexual abuse or harm. As father correctly notes, the record is devoid of evidence that father or anyone physically or sexually abused C.B. There is no evidence C.B. was physically harmed or injured. Father also points out the obvious gender and slight age difference between C.N. and C.B., as well as the fact that C.B. is father’s biological child while C.N. is not. In addition, for the

nine months between the initial petition (when C.B. was removed from mother and placed with father) and the 342 petition (when C.B. was detained from father), father had cared for C.B. without incident or concern.

Despite the above evidence indicating C.B. had not been harmed or abused while in father's care, other facts support the juvenile court's exercise of jurisdiction. For example, in many ways, C.B. and C.N. are similarly situated. C.N. and C.B. had lived together with mother and father in the small one-bedroom home where the sexual abuse occurred. The abuse occurred in the home's only bedroom, where all four family members slept and, at least on occasion, where they watched television. Also, although father tries to distance his close familial relationship with C.N., it is undisputed he had lived with, and been a father figure to, C.N. since she was only one year old. Mother stated father had "practically raised" C.N. In addition, although different ages, C.B. is only approximately two and a half years younger than C.N. and both are of tender years. (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1219.) In addition, C.B. is particularly vulnerable not only because of his young age, but also because of his speech delay, which makes it difficult for him to communicate and would hinder his ability to disclose any abuse if it were to occur.

Finally, although not as extreme as some conduct described in other cases, father's sexual abuse of C.N. is indisputably aberrant sexual behavior and constitutes a "violation of trust" and "a fundamental betrayal of the appropriate relationship between the generations.'" (*In re I.J., supra*, 56 Cal.4th at p. 778.) "Such misparenting is among the specific compelling

circumstances which may justify state intervention, including an interruption of parental custody.’” (*Ibid.*)

Although relied upon by father, *In re Luis H.* (2017) 14 Cal.App.5th 1223 does not change our analysis. That case involved a mother and her four children, one of whom had alleged her mother’s boyfriend sexually abused her. (*Id.* at p. 1225.) The juvenile court assumed jurisdiction over the one sexually abused child but refused to exercise jurisdiction over the remaining children. (*Id.* at pp. 1225–1226.) Two of the non-dependent children appealed, arguing the juvenile court should have exercised its jurisdiction over them as well. (*Id.* at p. 1226.) The only issue on appeal was the proper characterization of the children’s burden on appeal. (*Id.* at pp. 1226–1227.) The opinion includes no description, let alone discussion, of the sexual abuse at issue. As a result, and contrary to father’s contention, that case cannot be considered similar to the instant case.

As our Supreme Court has recognized, “ ‘The juvenile court is mandated to focus on “ensur[ing] the safety, protection, and physical and emotional well-being of children who are at risk” of physical, sexual or emotional abuse.’ ” (*In re I.J., supra*, 56 Cal.4th at p. 780.) Considering the totality of the circumstances here, we conclude substantial evidence supports the juvenile court’s exercise of jurisdiction over C.B. under subdivision (j).

3. Disposition

a. Standard of Review

As with the juvenile court’s jurisdictional findings, we review the court’s dispositional orders for substantial evidence. (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 560.)

b. Applicable Law

Section 361 authorizes the juvenile court to remove a minor from his parent's physical custody in certain circumstances. Specifically, section 361, subdivision (c) provides that a "dependent child shall not be taken from the physical custody of his or her parents . . . unless the juvenile court finds clear and convincing evidence . . . [¶] (1) [that] [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor . . . and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' . . . physical custody . . . [or] [¶] . . . [¶] (4) [that] [t]he minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent . . . and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent."

Removal may be proper even when the parent is not dangerous and the minor has not been harmed. (*In re A.S.* (2011) 202 Cal.App.4th 237, 247.) For purposes of removal, the focus is on avoiding harm to the child. (*Ibid.*) "The juvenile court has broad discretion to determine what would best serve and protect the child's interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion.'" (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311.)

c. Substantial Evidence Supports the Juvenile Court's Order Removing C.B.

Father challenges the juvenile court's dispositional order removing C.B. from father's custody. Father's challenge is

essentially based on his argument that jurisdiction was improper. However, because as discussed above, substantial evidence supports jurisdiction, we decline to disturb the challenged dispositional order. For the same reasons jurisdiction was proper, we conclude substantial evidence supports the juvenile court's removal order.

DISPOSITION

The April 11, 2018 orders are affirmed.

NOT TO BE PUBLISHED.

LUI, P. J.

We concur:

ASHMANN-GERST, J.

HOFFSTADT, J.